



To the Honorable Council  
City of Norfolk, Virginia

March 22, 2022

**From:** Douglas J. Beaver  
Director of Utilities

**Subject:** Conveyance of 3000 Birch Street  
to HRSD

**Reviewed:**

**Ward/Superward: 3/7**

A blue ink signature of Patrick Roberts, Deputy City Manager.

Patrick Roberts, Deputy City  
Manager

**Approved:**

A black ink signature of Dr. Larry H. Filer II, City Manager.

**Item Number: PH-5**

Dr. Larry H. Filer II, City Manager

I. **Recommendation:** Adopt Ordinance

II. **Applicant:** City of Norfolk

III. **Description:**

This agenda item is an ordinance approving the transfer by the City of Norfolk to Hampton Roads Sanitation District (HRSD) of property and facilities located at 3000 Birch Street and authorizing the City Manager to enter into an appropriate transfer agreement.

IV. **Analysis:**

- The City and HRSD desire to regionalize certain wastewater conveyance systems to create savings for their mutual rate payers and benefits to the City and HRSD by the division of roles and responsibilities regarding the ownership and operation of certain assets.
- The City currently owns the subject property and owns and operates a terminal wastewater pump station known as Pump Station No. 57 located on the property.
- The City and HRSD have determined that the transfer of a certain portion of the property and the pump station facilities will serve the needs of the service area most efficiently.
- The agreement provides that HRSD will make certain improvements to the facility that will allow upstream gravity sewers to meet minimum slope regulations.

**V. Financial Impact:**

- The City's loss of property value and net book value of the facilities are minor and are offset in part by the elimination of the labor-intensive operating costs of the existing facility.
- Matching funds are not required.
- The employment impact on the community is neutral.

**VI. Environmental:**

N/A

**VII. Community Outreach/Notification:**

Public notification for this agenda item was conducted through the City of Norfolk's agenda notification process.

**VIII. Board/Commission Action: N/A**

**IX. Coordination/Outreach:**


This letter and ordinance have been coordinated with the City Attorney's Office.

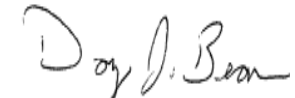
**Supporting Material:**

- Exhibit A to Ordinance - Legal Description (PDF)
- Exhibit B to Ordinance - Agreement (PDF)

Form and Correctness Approved: *BAP*

Contents Approved:

By:   
Office of the City Attorney

By:   
DEPT. Utilities

NORFOLK, VIRGINIA

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## Ordinance No.

AN ORDINANCE APPROVING THE TRANSFER BY THE CITY OF NORFOLK TO HAMPTON ROADS SANITATION DISTRICT OF PROPERTY AND FACILITIES LOCATED AT 3000 BIRCH STREET AND AUTHORIZING THE CITY MANAGER TO ENTER INTO AN APPROPRIATE TRANSFER AGREEMENT.

- - -

WHEREAS, the City of Norfolk ("City") owns certain real property ("Property"), with a pump station and other associated utilities infrastructure ("Facilities") situated thereon, located at 3000 Birch Street (GPIN # 1448462342), said property being described on Exhibit A attached hereto; and

WHEREAS, City desires to convey to Hampton Roads Sanitation District ("HRSD"), for no compensation, and HRSD desires to acquire from City the Property and Facilities as part of a plan to regionalize certain wastewater conveyance systems, create savings for the citizens of the City, and to create additional benefits for both the City and HRSD by a division of certain roles and responsibilities with regard to operation of systems and the transfer of ownership of certain assets; and

WHEREAS, HRSD intends and is agreeable to acquiring

the Property and Facilities for the purpose of operating and upgrading as necessary the Facilities systems to better meet the needs of the service area; and

WHEREAS, City and HRSD desire to enter into a transfer agreement ("Agreement") whereby they will agree to the terms and condition upon which the City shall convey and HRSD shall accept the ownership of the Property and Facilities; and

WHEREAS, it is the judgment of the Council of the City of Norfolk that the conveyance of the Property and Facilities to HRSD, for no compensation, is necessary and appropriate; now, therefore,

BE IT ORDAINED by the Council of the City of Norfolk:

Section 1:- That the terms and conditions of the Agreement, by which the City shall convey, and HRSD shall accept ownership of the Property and Facilities, in substantially the form of the version that is attached as Exhibit B, and for no compensation, is hereby approved.

Section 2:- That the City Manager and other proper officers of Norfolk are hereby authorized to execute the Agreement on behalf of the City.

Section 3:- That the City Manager, and the other proper officers of the City, are authorized to execute and deliver to HRSD a Special Warranty Deed in form satisfactory to the City Attorney, and to do all other things necessary and proper to effect the conveyance of the Property and Facilities to HRSD.

Section 5:- That the City Manager is further authorized to correct, amend or revise the Agreement and the Special Warranty Deed as he may deem necessary, consistent with the intent of the Council as expressed herein.

Section 6:- That this ordinance shall be in effect from and after thirty (30) from the date of its

adoption.

Attachments:

Exhibit A - Legal Description (1 Page)

Exhibit B - Transfer Agreement (14 pages)

**3000 Birch Street**

ALL THAT certain lot, piece or parcel of land, numbered according to the present system of street numbering as 3000 Birch Street, situate in the City of Norfolk, Virginia, and being known, numbered and designated as Parcel B, as shown on a plat entitled “Subdivision Plat of the Property of Norfolk known as Pump Station 57, Norfolk, Virginia”, dated October 21, 2021, duly recorded in the Clerk’s Office of the Circuit Court of the City of Norfolk, Virginia in Instrument 210032919.

February 10, 2022

## **EXHIBIT B TO ORDINANCE**

NORF-PS-057 TRANSFER AGREEMENT BETWEEN HRSD and THE CITY OF NORFOLK

### **HAMPTON ROADS SANITATION DISTRICT AND CITY OF NORFOLK TRANSFER AGREEMENT FOR WASTEWATER PUMP STATION No. 57 FACILITIES**

THIS AGREEMENT ("Agreement"), between the CITY OF NORFOLK ("CITY") and the HAMPTON ROADS SANITATION DISTRICT ("HRSD"), entered this \_\_\_\_\_ day of \_\_\_\_\_, 2022, collectively referred to as the "Parties".

WHEREAS, it is the desire for the CITY and HRSD to regionalize certain wastewater conveyance systems in an effort to create savings for the CITY and HRSD's mutual ratepayers and also to create additional benefits to both the CITY and HRSD by the division of certain roles and responsibilities with regard to operation of systems and the transfer of ownership of certain assets; and

WHEREAS, CITY currently owns certain real property located at 3000 Birch Street, (legal description: GPIN 1448462342) in the Estabrook area of the City of Norfolk, VA, and as shown in Exhibit A and hereafter refer to as PROPERTY;

WHEREAS, the CITY owns, operates, and maintains a terminal pump station, a permanent bypass pump and appurtenances known as Wastewater Pump Station No. 57 Facility ("WPS #57"), and as shown in Exhibit B1;

WHEREAS, the CITY owns, operates, and maintains approximately 35 LF of 24-inch PVC C900 gravity sewer influent and a sewer manhole (SMH-J12-00032) upstream from the pump station well, and as shown in Exhibit B2;

WHEREAS, the CITY owns, operates and maintains approximately 265 LF of 12-inch DI force main which conveys wastewater from WPS #57 to HRSD's regional interceptor system (SF-069) located at the intersection of Birch Street and Robin Hood Road, and as shown in Exhibit B2;

WHEREAS, all existing CITY wastewater infrastructure described herein and in Exhibits B1 and B2 are hereafter referred to as FACILITIES;

WHEREAS, HRSD is currently pursuing a subdivision of the PROPERTY and the acquisition of ownership of a certain portion of the Property, noted as Parcel B on the attached Exhibit C (NEW PARCEL, 0.174 ac);

WHEREAS, HRSD is also currently pursuing a non-exclusive 30-ft utility easement located within the 30-ft Public Ingress/Egress and Utility Easement shown on Exhibit C ("EASEMENT");

WHEREAS, CITY and HRSD have determined that a transfer of ownership of the NEW PARCEL and FACILITIES, and the conveyance of the EASEMENT, from CITY to HRSD will serve the needs of the service area most efficiently;

WHEREAS, CITY is agreeable to convey, and HRSD is agreeable to acquire, the NEW PARCEL, FACILITIES and EASEMENT;

NOW, THEREFORE, it is mutually agreed between the parties as follows:

**I. OWNERSHIP TRANSFER DESCRIPTION**

**A. CITY agrees to the following:**

1. CITY will convey the NEW PARCEL and FACILITIES described herein and in Exhibits B1, B2 and C to HRSD in fee simple by Special Warranty Deed in “as is” condition and assign all its rights, title and interest in their entirety in accordance with the terms and conditions of this Agreement.
2. CITY agrees that on the date of conveyance, the title shall be marketable and free and clear of all liens and encumbrances that would have a materially adverse effect. However, the real estate property may be subject to easements and restrictions then of record which do not materially affect the use of the PROPERTY;
3. CITY will convey the EASEMENT to HRSD which will be located adjacent to and along the northern property line of the NEW PARCEL;
4. CITY shall maintain ownership of all existing infrastructure in the collection system for WPS #57 upstream from sewer manhole SMH-J12-00032. HRSD will agree to grant the CITY at no cost required utility easements for any portion of the CITY infrastructure located within the NEW PARCEL.
5. CITY agrees to provide HRSD available record drawings and condition assessment CCTV records for all FACILITIES.

**B. HRSD agrees to the following:**

1. HRSD acknowledges that the CITY has made no representations or warranties whatsoever regarding the PROPERTY, except for Special Warranty of Title;
2. HRSD agrees that it has inspected and is thoroughly familiar with the PROPERTY and is acquiring the NEW PARCEL, FACILITIES and EASEMENT in its “as is” condition;
3. HRSD understands and agrees that the CITY has not made and makes no representations or warranties of any kind with respect to the condition of the NEW PARCEL, FACILITIES, and EASEMENT or their fitness, suitability or acceptability for any particular use or purpose, and the CITY shall not be liable for any latent or patent defects therein;



4. HRSD agrees to rehabilitate the upstream sewer manhole (Facility ID # J12-00032) and replace the influent gravity sewer at a depth to facilitate future upstream CITY gravity collection infrastructure improvements;
5. HRSD agrees to afford the CITY the right to salvage any or all components of the FACILITIES which are planned for replacement and/or removal. Components shall include but not limited to the existing bypass pump, interior pumps, valves, electrical components, and appurtenances. City will be responsible for the removal and transfer of all salvaged components. Removal of such components shall be implemented upon coordination with HRSD staff and the pump station facility is on a bypass mode of operation for the FACILITIES improvements.

## **II. ROLES AND RESPONSIBILITIES**

### **A. CITY agrees to the following:**

CITY will provide HRSD gross asset and accumulated depreciation values for PROPERTY and FACILITIES.

### **B. HRSD agrees to the following:**

1. HRSD will perform a title examination to ascertain the condition of the title of the NEW PARCEL being conveyed and obtain owner's title insurance on the property to be effective on the date of conveyance;
2. HRSD will pay all costs of ownership of the FACILITIES, accept operational responsibilities and pay the costs of operation of the FACILITIES at the date of conveyance;
3. HRSD will replace the existing sign on the existing WPS #57 structure with a new sign to indicate ownership by HRSD and an emergency contact telephone number within five business days after the date of conveyance.

### **C. Both CITY and HRSD agree to the following provisions:**

1. The City and HRSD agree that HRSD shall pay no compensation to City for its conveyance of the PROPERTY, FACILITIES AND EASEMENT to HRSD
2. It shall be a condition precedent to HRSD's acceptance of the FACILITIES and NEW PARCEL, that HRSD is able to obtain owner's title insurance on the FACILITIES and NEW PARCEL through a company authorized to do business in the Commonwealth of Virginia at normal and typical rates.
3. Possession of the NEW PARCEL will be given to HRSD at closing.

4. HRSD agrees to pay the expenses of preparing the deed and all other fees and costs charged in connection with the transfer of the NEW PARCEL and the recordation of the deed.
5. CITY and HRSD agree that the attorney or title insurance company ("Title Company") selected by HRSD shall act as the settlement agent ("Settlement Agent") at HRSD's expense. The Settlement Agent shall prepare the settlement statement, update and record the deed, collect and disburse settlement funds in accordance with this Agreement and the settlement statement, and file any required state and federal tax forms or other certifications.
6. FEASIBILITY PERIOD: HRSD shall have ninety (90) days from the date this Agreement is executed by all parties in which to complete their assessment of the NEW PARCEL, including title examination and environmental assessment.
7. CONDITIONS: HRSD's obligations are expressly conditioned upon receipt of a satisfactory title commitment during Feasibility Period. It being understood that the CITY is under no obligation whatsoever to expend any funds to satisfy this condition. If this condition cannot be met during the Feasibility Period, HRSD may unilaterally terminate this Agreement.
8. CLOSING: The Closing will be made at the offices of the Settlement Agent or such other location as the parties may agree, within thirty (30) days after expiration of the Feasibility Period, or as soon thereafter as settlement documents can be prepared and any title issues can be resolved. If, for any reason, HRSD fails to effectuate settlement and Closing on the NEW PARCEL before the expiration of one (1) year from the date this Agreement is fully executed, this Agreement shall immediately terminate unless extended at the sole discretion of the CITY.
9. CITY and HRSD agree to execute all documentation and take all necessary actions to effectuate this Agreement. Upon execution of this Agreement, HRSD and its agents, employees, engineers, and surveyors shall have access to the NEW PARCEL and FACILITIES in accordance with Section III of this Agreement.
10. The intention is to transact the conveyance of NEW PARCEL and FACILITIES as shown in Exhibits B1, B2 & C of this Agreement as soon as possible and before construction. The exact date of conveyance is to be mutually agreeable to both parties.

11. **BROKERAGE OR AGENT'S FEES:** Neither the CITY nor HRSD are represented by a real estate broker, agent or finder in this transaction. No fees or commissions are or will be due from or payable by the CITY as a result of this transaction. CITY shall have no obligation whatsoever to pay any brokerage or agent's fees or commissions, nor shall the CITY have any obligation whatsoever to see that any such fees or commissions are paid. HRSD and CITY agree to indemnify and hold each other harmless from and against any claim for broker, agent or finder fees or commissions.

### III. GENERAL PROVISIONS

- A. Right of Entry: HRSD shall have the right to enter onto the WPS #57 facility and NEW PARCEL, and all infrastructure therein for the purpose of making surveys, obtaining data, measurements and design data to ascertain such engineering data as may be necessary for the purposes of design, perform environmental tests, and soil tests provided such testing does not materially interfere with CITY's use of the facility and property and further provided that said tests shall not be so exercised as to cause material damage to said facility and property. All such testing is to be at the risk and expense of HRSD. In connection with this right to enter upon the facility and property, HRSD agrees (i) to restore the facility and property to its prior condition after the performance of any such survey or other investigation and (ii) to indemnify, defend and hold CITY harmless from and against all costs, losses, damages, and expenses, including reasonable attorneys' fees, arising out of the activities of HRSD and/or its employees, agents and representatives on the facility and property. CITY has the right to be present during any entry upon the facility and property by HRSD.
- B. CITY has the right to enter WPS#57 facility and NEW PARCEL upon notification to HRSD to remove and transfer any components the CITY wishes to salvage. HRSD shall not be held liable to any injuries to CITY staff or equipment damage caused during the salvage operation.
- C. Notices: All notices required pursuant to the terms of this Agreement shall be deemed effective when delivered by certified mail, return receipt requested, postage prepaid, to CITY and to HRSD at the respective addresses herein shown, unless this Agreement is modified in writing to reflect other addresses:

CITY of Norfolk	HRSD
c/o Director, Department of Utilities	c/o General Manager
401 Monticello Avenue	PO Box 5911
Norfolk, VA 23510	Virginia Beach, VA 23471

With Copies to:

HRSD Counsel:  
Janice Anderson  
Kellam, Pickrell, Cox & Anderson PC  
403 Boush Street, Suite 300  
Norfolk, VA 23510

And

Office of the Norfolk CITY Attorney  
810 Union Street, Suite 900  
Norfolk, VA 23510

- D. Entire Agreement: This Agreement, and any exhibits or attachments made hereto, represent the full agreement and understanding of the parties hereto, there being no additional agreements written, oral or otherwise. This Agreement may be amended only by a writing signed by both parties.
- E. Authority: CITY and HRSD both warrant that they have permission and authority derived under their respective corporate Charters and Enabling Acts to execute and undertake this Agreement and that all necessary actions of the Norfolk CITY Council to allow execution of this Agreement have been completed, and that all necessary Resolutions and actions of the Commission of HRSD to allow execution of this Agreement have been completed. This Agreement shall apply to, and be binding upon both Parties, their elected officials, officers, agents, employees, successors, and assigns.
- F. Compliance with Law: Each party warrants that it has complied with all aspects of applicable federal, state, and local law in entering this Agreement and further warrants that it shall comply with all applicable federal, state, and local laws in the performance of this Agreement.
- G. No Violation: The execution of this Agreement by the parties will not violate any covenant, condition, or contract to which the parties hereto are subject at the time of execution.
- H. Post-Execution Impact on Title: Upon execution of this Agreement, CITY shall not take any action with respect to the FACILITIES, NEW PARCEL or both that would impact or affect the quality of title that will be conveyed to HRSD in accordance with Section I of this Agreement, with the exception of exercise of the CITY's powers of eminent domain.
- I. Governing Law; Venue: This Agreement shall be deemed to be a Virginia Contract and shall be governed as to all matters whether of validity, interpretations, obligations, performance or otherwise exclusively by the laws of the Commonwealth of Virginia, and all questions arising with respect thereto

shall be determined in accordance with such laws. Regardless of where actually delivered and accepted, this contract shall be deemed to have been delivered and accepted by the parties in the Commonwealth of Virginia. Venue shall be in the courts of the City of Norfolk.

- J. Enforcement: The failure of either party to enforce the terms of this Agreement shall not be considered a waiver as to the enforceability of such terms. If any provision of this Agreement is found to be unenforceable, the remainder of this Agreement shall remain in full force and effect.
- K. Survival: This Agreement shall survive settlement and conveyance of title and shall terminate only upon the written agreement of both Parties.
- L. Force Majeure: No Party shall be responsible for its failure to fulfill an obligation pursuant to this Agreement to the extent that such failure is due to acts of God; labor strikes; war or terrorism; epidemics/pandemics; the actions of a third party; the actions of another Party; lockouts; or other events not reasonably within the control of the Party claiming force majeure. A Party experiencing a force majeure event that prevents fulfillment of a material obligation hereunder shall (a) give the other Party prompt written notice describing the particulars of the event; (b) suspend performance only to the extent and for the duration that is reasonably required by the force majeure event; (c) use reasonable efforts to overcome or mitigate the effects of such occurrence; and (d) promptly resume performance of the affected obligation if and when such Party is able to do so.
- M. Counterparts: This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original as against any Party whose signature appears thereon, and all of which shall together constitute one and the same instrument.
- N. Binding Effect: This Agreement shall inure to the benefit of the Parties and shall, to the maximum extent permitted by law, be binding on the Parties and their successors and assigns.
- O. Reservation: Except as expressly provided herein, nothing in this Agreement shall be construed to limit or otherwise affect the authority, rights, or responsibilities of the Parties.

IN WITNESS WHEREOF, the CITY of Norfolk has caused this AGREEMENT to be signed by the CITY Manager pursuant to the Resolution adopted by the CITY Council on \_\_\_\_\_, 20\_\_\_\_.

CITY OF NORFOLK

By: \_\_\_\_\_  
\_\_\_\_\_

Attest:

COMMONWEALTH OF VIRGINIA  
CITY OF NORFOLK, to-wit:

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, CITY Manager of the CITY of Norfolk and \_\_\_\_\_, who is CITY Clerk of the CITY of Norfolk.

\_\_\_\_\_  
Notary Public

Notary#: \_\_\_\_\_

My Commission expires: \_\_\_\_\_

APPROVED AS TO CONTENT:

\_\_\_\_\_  
Director, Department of Utilities

APPROVED AS TO FORM AND  
CORRECTNESS:

\_\_\_\_\_  
CITY Attorney's Office

IN WITNESS WHEREOF, the Hampton Roads Sanitation District Commission has caused this AGREEMENT to be signed on its behalf by its General Manager in accordance with authorization granted at its regular meeting held on October 26, 2021.

HAMPTON ROADS SANITATION DISTRICT

By: \_\_\_\_\_  
Edward G. Henifin, P.E., General Manager

COMMONWEALTH OF VIRGINIA  
CITY OF VIRGINIA BEACH, to-wit:

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2022, by Edward G. Henifin, P.E., General Manager of Hampton Roads Sanitation District. He is personally known to me or provided \_\_\_\_\_ as identification.

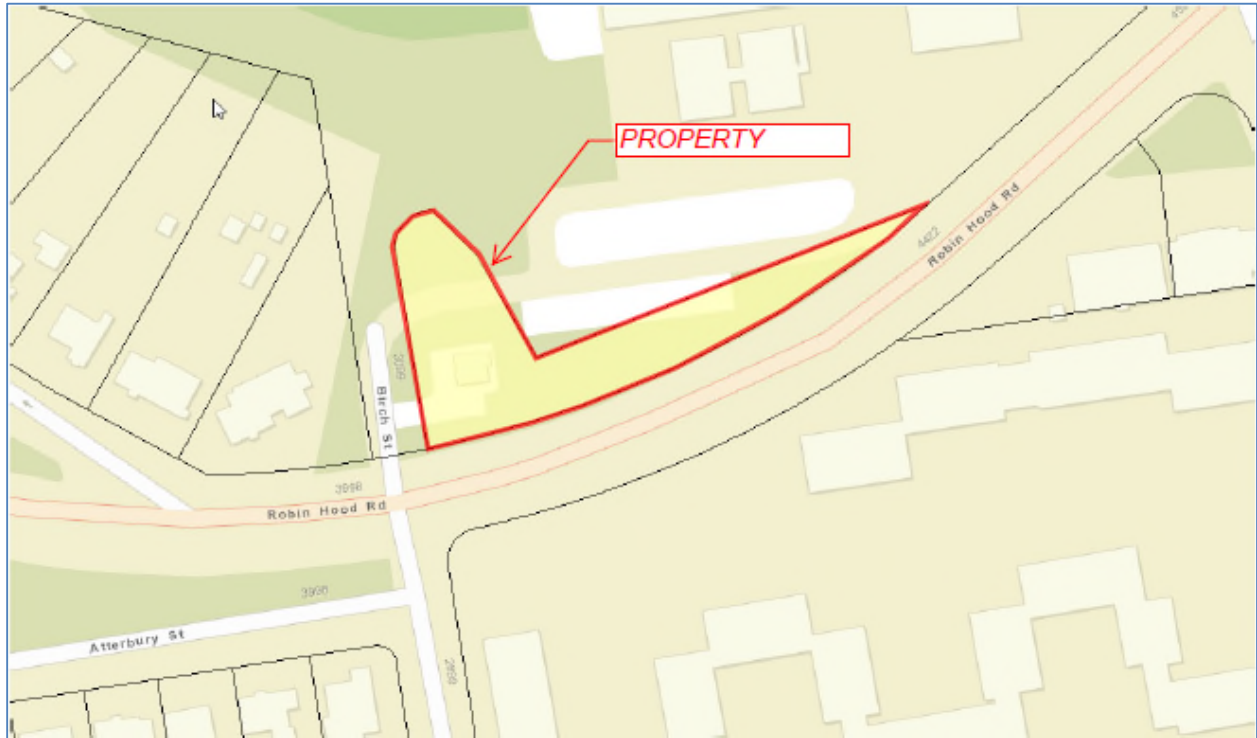
\_\_\_\_\_  
Notary Public

Notary#: \_\_\_\_\_

My Commission expires: \_\_\_\_\_

## Exhibit A: Property

3000 Birch Road, Norfolk VA, 23513 (legal description: GPIN 1439396461 Estabrook Subdivision)





## Exhibit B1: Facilities

### Wastewater Pump Station No. 57 Facility ("WPS #57")



## Exhibit B2: Facilities

Sewer manhole #J12-00032, 35 LF of 24-inch PVC C-900 gravity main, and 265 LF of 12-inch DI Force Main.

